

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JASON WESTFALL,

Plaintiff, Civil No. 07-1670-AA

v. ORDER

MAX WILLIAMS, et al.,

Defendants.

AIKEN, District Judge.

Plaintiff, an inmate in the custody of the Oregon department of Corrections, filed a complaint under 42 U.S.C. § 1983, alleging that his constitutional rights are violated by (1) the conditions of confinement in the Intensive Management Unit [at the Oregon State Penitentiary]; and (2) the imposition of disciplinary fines when he has no means to pay them.

On October 20, 2008, defendants filed a Motion to Dismiss (#32) on the ground that plaintiff has not exhausted

administrative remedies with respect to the claims alleged in his complaint. Plaintiff did not respond to defendants' motion and the motion came under advisement by the court on November 24, 2008.

On December 3, 2008, plaintiff was ordered to show cause in writing by January 2, 2009, why defendant's unopposed motion should not be all owed. Plaintiff was advised that failure to show cause as directed by the court would result in the dismissal of this action for failure to prosecute. Plaintiff has not responded to the court's order.

42 U.S.C. § 1997(e)(a) requires that inmates exhaust all administrative remedies prior to filing an action under 42 U.S.C. § 1983. Porter v. Nussle, 534 U.S. 516, 531-32 (2002); Booth v. Churner, 532 U.S. 731 (2001); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003); Bennett v. King, 293 F.3d 1096, 1098 (9th Cir. 2002); and McKinney v. Carely, 311 F.3d 1198 (9th Cir. 2002).

The Oregon Department of Corrections has a grievance system to address inmate complaints. It is undisputed on the record before the court that plaintiff has not exhausted his administrative remedies with respect to the claims alleged in his complaint. Therefore, plaintiff's complaint fails to state a claim cognizable under 42 U.S.C. § 1983.

Defendant's motion to dismiss (#32) is allowed. This action is dismissed.

IT IS SO ORDERED.

DATED this 22 day of January, 2009.

/s/ Ann Aiken
Ann Aiken
United States District Judge